BOOK REVIEWS

A SHORT HISTORY OF ENGLISH LAW. By Edward Jenks, D. C. L. Boston: Little Brown & Co., 1912.

The interest aroused in that long neglected subject, English Legal History, by the brilliant work of Sir Frederick Pollock, Professor Maitland, Mr. Justice Holmes and Dr. Holdsworth, not to mention others whose studies in special fields have contributed so largely to our knowledge of English law, is slowly extending from those centers of legal education where the enthusiasm of the great masters could be imparted to the few, and penetrating the bar as a whole, so that the contemptuous indifference of the last generation toward subjects vaguely classed as academic, is slowly giving way to a feeling that at least some knowledge of legal history should form part of the general education if not the essential equipment of the lawyer. In some law schools, the instruction includes a considerable amount of historical information given in the teaching of the ordinary courses, and, no doubt, this amount would be larger and more coherent were it not for the pressure of an already crowded curriculum. In other schools such work is out of the question, while the office student is left with no means of bridging the gap between Blackstone and the Twentieth Century.

Out of the abundance of his learning and experience, Professor Jenks has supplied the need for a text-book of moderate size on this topic. The difficulty of co-ordinating and keeping within reasonable bounds a subject so vast and complex is so great that one cannot but admire the manner in which the author has handled his material, covering the whole field of English legal history, except constitutional history, from the Anglo-Saxon period to the present time, in a single volume of moderate compass; a readable volume too, clear, simple and with a personal point of view that holds the reader's attention. The method employed is not the so-called "vertical method," by which each separate topic is traced from its origin to its present form; the whole work is divided into periods each of which expresses a distinct stage in legal development. In the earlier portions of the work, the author, although expressing many decided views of his own, has drawn largely upon the work of previous writers; but in the modern portions he has entered upon new ground not traversed by other writers and it is this part of his work that will prove of the utmost value to the professional reader who would inform himself upon the maze of changes, statutory and otherwise, through which the common law has passed in the last two centuries. The work, of course, is not exhaustive; that is neither to be expected nor desired in a volume intended for the general reader, not the specialist. But it is quite comprehensive enough to answer the purposes of the student beginning the study of the law, as well as those of the lawyer who would brush up on his history; and, aside from such strictly professional use, it is particularly well adapted for collateral reading in University courses on English history and institutions.

W. H. L.

THE PRACTICE OF DEMOCRACY. By Henry E. Foelske. Milwaukee: C. N. Caspar Co., 1912.

This monograph, whose alternate title is "Socialism versus Individualism," delivers an able attack upon socialism and so-called social legislation in their relations to the fundamental principles of human nature and political economy, and attempts to show the necessity of preserving the Constitution inviolate as well as the desirability of further enlarging the scope of the judiciary.

The arguments are based upon the assumption that it is the inalienable, moral right of every citizen to be allowed to pursue unrestrictedly his own interests, unless they clash with some absolute moral duty owed to others. The author maintains that the right of individual freedom to this extent is one which is not only guaranteed by the so-called "due process" and "freedom of contract" clauses of the Constitution, but is also the result of human nature as it exists to-

day. All that the Constitution really stands for, and all that is necessary to the welfare of society is that each individual should be permitted, as long as he inflicts no wrong upon another, to be free to develop himself to whatever extent his own ability can bring him. Consequently, all political doctrines which tend to restrict the natural development of the individual by legislatively hampering him and assisting others to attain an economically artificial status are contrary to the real principles of both political economy and political science.

As a necessary corollary to the individualistic theory, it follows that rigid statutory law should be reduced to a minimum and the great moral and economic principles upon which the common law is based should be interpreted by the judiciary as the facts of each case warrant. The author argues very forcibly that the Constitution and the common law are elastic enough to cover all new situations; and, as regards the Constitution, he claims that it is this instrument with its two great individualistic clauses concerning the freedom of contract and the deprivation of property without due process of law which stand today as the chief barriers to socialism itself and unjust social legislation. He asserts that the remedy for present conditions does not lie in strengthening and enlarging the executive branch of the government, since this is tending towards an autocracy and its dangers, and he believes that if the legislative branch of the government were made supreme, the rigid codifying of moral principles into statutes would probably occur and would work grave injustice in many cases. He accordingly concludes that "the work of enforcing rights and redressing wrongs is the duty of Courts and it is the principal function of legitimate political government."

The work itself is a very clear statement of the individualistic point of view; and is an interesting addition to the arguments which have appeared upon the great modern political controversy as to whether or not it is expedient to sacrifice some of the rights of individual freedom for the benefit of a broader and more altruistic form of democracy.

P. C. M., Jr.